

Frank Battle

From: Bryan Hebert
Sent: Wednesday, January 19, 2011 2:55 PM
To: Bryan Hebert
Subject: voter ID

-----Original Message-----

From: Bryan Hebert
Sent: Thursday, January 13, 2011 3:05 PM
To: Noe Barrios
Subject: voter ID

Noe -

Blaine mentioned that your boss had some concerns about whether Fraser's voter ID bill complied with the Voting Rights Act. As you know, all changes to Texas election law have to be pre-cleared by the DOJ or the DC Circuit Court. The good news is that the US Supreme Court has already upheld a similar photo ID law in Indiana. Below are some notes I prepared last session that incorporate parts of the Court's findings in that case. Let me know if you want to chat more.

ENSURING COMPLIANCE WITH SUPREME COURT

I. LEGITIMATE STATE INTERESTS

- Deterring and detecting fraud
- Improving and modernizing election procedures
- Protecting against fraud enabled by inaccurate registration rolls
- Counting only eligible voters' votes
- Protecting public confidence in elections

II. MEASURES REQUIRED TO OFFSET BURDENS ON VOTERS

- Access to free photo ID cards
- Availability of provisional ballots and absentee ballots
- Ensure that obtaining ID is no more inconvenient or burdensome than usual act of voting

III. MEASURES RECOMMENDED TO OFFSET BURDENS ON VOTERS

- Phase-in over two election cycles (as prescribed by Carter-Baker Report)
- Exception for certain elderly voters (to decrease size of class of voters adversely impacted by law)

Bryan Hebert
Deputy General Counsel
Office of the Lieutenant Governor
512-463-0001



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**TALKING POINTS FOR DHD CALL TO MEMBERS
VOTER ID TIMELINE & PROCEDURES**

DRAFT

Today Governor Perry designated voter i.d. legislation as an emergency within the Constitutional Order of Business.

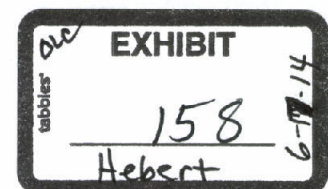
It is my intent to name Senator Duncan as chair of the Committee of the Whole and to work with Senator Duncan so the Committee can take up SB 14 starting on Monday.

Senator Duncan did a great job presiding last time, and I think he has earned the members' trust on this issue. I have asked him and Senator Fraser to move the bill as expeditiously as possible.

I intend for the Senate to meet as long as it takes next week to get this done. We have a lot of other very important work ahead of us, and I think it is in the Senate's best interests to complete our work on voter i.d. so we can concentrate on the budget, eminent domain, border security, and other pressing issues.

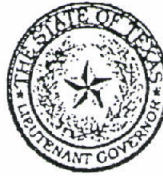
Senator Duncan will be in touch with you about specific procedures for the Committee.

I'm calling because I wanted you to hear it first from me.



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OFFICE OF THE LIEUTENANT GOVERNOR
David Dewhurst

FOR IMMEDIATE RELEASE
January 20, 2010

CONTACT: Mike Walz
(512) 463-0715
mike.walz@ltgov.state.tx.us

**Lt. Governor Dewhurst Statement Regarding
Governor Perry's Emergency Call**
Voter ID and Federal Balanced Budget Amendment Added to Emergency Items

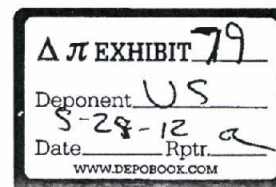
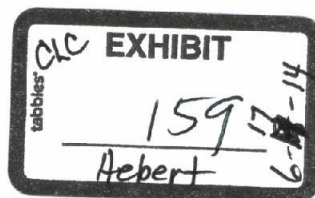
AUSTIN— Today, Lt. Governor David Dewhurst issued the following statement regarding Governor Perry's declaration of additional emergency items for the 2011 legislative session:

"I'm pleased that Governor Perry has agreed to include a Federal Balanced Budget Amendment and Voter ID in his Emergency Call.

"Texas has a Constitutional duty to balance our budget which forces lawmakers to regularly review and prioritize state spending, and Washington should be forced to do the same with federal spending.

"Texans have fought and died for the principle of one person, one vote; and Republicans, Independents and Democrats all agree that we must uphold the integrity of our elections."

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The Capitol
Austin, Texas 78711-2068
512-463-0001

David Dewhurst
Lieutenant Governor of Texas
President of the Senate

1-800-441-0373
Fax: 512-936-6700
Dial 711 for Relay Calls

January 20, 2011

The Honorable Brian Birdwell
Capitol Extension
Room E1.708
Austin, Texas 78701

Dear Senator Birdwell:

On Monday, January 24, 2011, it is my intent to recognize Senator Robert Duncan for a motion resolving the Senate into a Committee of the Whole to consider Senate Bill 14, relating to requirements to vote, including presenting proof of identification; providing criminal penalties.

Pursuant to Senate Rule 13.02, it is also my intent to appoint Senator Duncan as Chair of Committee of the Whole for all of the meetings relating to Senate Bill 14.

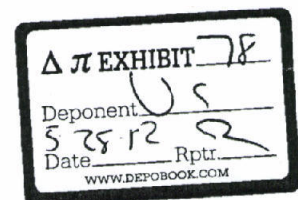
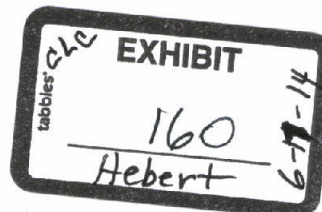
I have asked Senator Duncan to forward to each of you a draft resolution outlining the procedures for the Committee of the Whole. The resolution will be taken up on Monday prior to the committee meeting. Please contact Senator Duncan with any questions regarding next week's procedures.

Sincerely,

A handwritten signature in black ink that reads "David Dewhurst".

David Dewhurst
Lieutenant Governor

DD: eg



From: Jonathan Stinson
Sent: Friday, January 21, 2011 5:31 PM
To: Wroe Jackson
Subject: Fw: voter ID info
Attachments: VOTE - ensuring compliance with Sup Ct.doc; VOTE - 82R TALKING POINTS.docx; VOTE - state law comparison.doc

Jonathan Stinson
jonathan.stinson@senate.state.tx.us

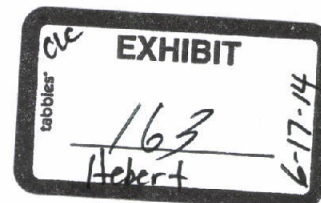
From: Bryan Hebert
To: Jason Baxter; Janice McCoy; Jonathan Stinson
Cc: Blaine Brunson; Julia Rathgeber
Sent: Fri Jan 21 17:29:43 2011
Subject: voter ID info

Attached are several documents that may prove useful in preparing for next week's voter ID debate, including:

- (1) a summary of proposed talking points
- (2) a summary of the standard necessary to pass US Supreme Court scrutiny
- (3) a chart of the differences between the Indiana, Georgia, and Texas laws

Obviously these documents will be supplemented by information discussed Sunday night, and I will be compiling more data tomorrow for your review.

Bryan Hebert
Deputy General Counsel
Office of the Lieutenant Governor
512-463-0001



ENSURING COMPLIANCE WITH SUPREME COURT

I. LEGITIMATE STATE INTERESTS

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TALKING POINTS (82R)

I. THE THREAT OF FRAUD IS REAL

- Deceased voters, felons, duplicate registrations, and non-residents remain on voter rolls (*2007 State Auditor report found over 49,000 of these possible ineligible voters*)
- Fraudulent registration applications are rampant (*over 6,000 applications by non-citizens rejected in Harris County from 2004-2007, 2008 ACORN and 2010 Houston Votes registration scandals made national news*)
- Texas Election Administration Management (TEAM) system is improving, but continues to have accuracy problems
- Current election system is inadequate to catch in-person voting fraud

II. THIS BILL PROTECTS TEXAS VOTERS

- Deters and detects fraud
- Improves and modernizes election procedures
- Protects against fraud enabled by inaccurate registration rolls
- Counts only eligible voters' votes
- Protects public confidence in elections

(These points are taken directly from Supreme Court opinion describing Indiana's "legitimate state interests" in adopting photo ID)

III. THIS BILL REPRESENTS AN ATTEMPT TO ENSURE THAT EVERY ELIGIBLE VOTER CAN VOTE AND THAT ONLY LEGITIMATE VOTES ARE COUNTED

- Simplified bill requires photo ID
- includes exemption for voters over 70 and a procedure for counting provisional ballots
- Similar to Indiana and Georgia laws (which were both upheld by the federal authorities)
- Requires months of statewide voter education efforts before law takes effect

	INDIANA LAW	GEORGIA LAW	TEXAS - SB 14	TEXAS - CURRENT LAW
REQUIRED ID.	<p>One photo ID:</p> <ul style="list-style-type: none"> state or federal ID that includes name, photo, and expiration date (specific forms of ID not provided) 	<p>One photo ID:</p> <ul style="list-style-type: none"> driver's license (even if expired) state or federal photo ID local, state, or federal govt employee photo ID U.S. passport military photo ID tribal photo ID 	<p>One photo ID:</p> <ul style="list-style-type: none"> DPS-issued ID that has not expired military photo ID citizenship certificate with photo U.S. passport 	<p>voter registration card</p> <p>- OR -</p> <p>sign affidavit at polls</p> <p>AND</p> <ul style="list-style-type: none"> DPS-issued ID (even if expired) any photo ID with name birth certificate citizenship papers U.S. passport govt-issued mail or document other ID prescribed by Sec of State
EXCEPTIONS TO PHOTO REQUIREMENT	<ul style="list-style-type: none"> indigent religious objection voters in state-licensed care facility 	none	none	(photo ID not required)
PROVISIONAL BALLOT	If no ID, voter may cast provisional ballot and may return within 10 days with ID for ballot to be counted	If no ID, voter may cast provisional ballot and may return within 2 days with ID for ballot to be counted.	If no ID, voter may cast provisional ballot, and may return within 6 days with ID for ballot to be counted.	If no ID, voter may cast provisional ballot, and registrar must confirm eligibility within 7 days

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REQUIRED VOTER EDUCATION	secretary of state conducts statewide education campaign for voters and poll workers	none	secretary of state conducts statewide education campaign for voters and poll workers	N/A
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(The Indiana law was upheld by the Supreme Court and the Georgia law was upheld by the DOJ)

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TX_00262649

From: Jonathan Stinson
Sent: Saturday, January 22, 2011 4:54 PM
To: 'jlawyer119@aol.com'; Wroe Jackson
Subject: Fw: preclearance
Attachments: VOTE - DOJ review.docx

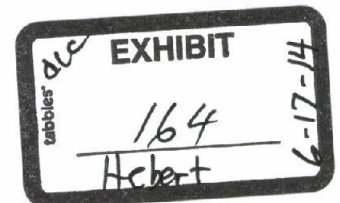
Jonathan Stinson
jonathan.stinson@senate.state.tx.us

From: Bryan Hebert
To: Jason Baxter; Janice McCoy; Jonathan Stinson
Cc: Blaine Brunson; Julia Rathgeber
Sent: Sat Jan 22 16:41:19 2011
Subject: preclearance

Attached is a memo I've prepared assessing the chances of a Texas photo ID law being pre-cleared by the Obama DOJ. The bottom line: doubtful. To increase our chances, we might consider adding a longer list of acceptable photo IDs. I'd suggest using the language in Georgia's law (ie. any ID issued by the federal govt, state govt, or local govt within the state). At a minimum, we might use the language used in our bill that passed last session: "a valid identification card that contains the person's photograph and is issued by: (A) an agency or institution of the federal government; or (B) an agency, institution, or political subdivision of this state."

Of course, it is also an option to go around the DOJ and seek pre-clearance directly from a three-judge panel of the DC District Court, which might be more favorable to our law.

Bryan Hebert
Deputy General Counsel
Office of the Lieutenant Governor
512-463-0001



STANDARD OF REVIEW BY DEPARTMENT OF JUSTICE

Background

Section 5 of the Voting Rights Act states that a covered jurisdiction (such as Texas) may not implement a change in its election laws or practices unless the jurisdiction demonstrates the change will be free of any racially discriminatory purpose or effect and will not be "retrogressive" and diminish the ability of minority citizens to vote. A covered jurisdiction must submit a proposed election law for formal approval to either the United States Department of Justice - Civil Rights Division or to the United States District Court for the District of Columbia (represented by a randomly chosen three-judge panel) for a declaratory judgment that the proposed law is acceptable.

Standard of legal review

Georgia is the only Section 5 state with a photo ID requirement. In 2005, mid-level DOJ staff rejected Georgia's proposed law, but were overruled by Bush-appointed senior DOJ staff. Presumably, senior staff appointed by Obama will be less inclined to do so. The 2005 DOJ legal review of the Georgia law indicates that the DOJ is most concerned with the following factors:

IS THERE A RETROGRESSIVE EFFECT?

- Did Texas produce or consider any evidence regarding whether Hispanics and blacks are less likely to possess or obtain a photo ID?
- How did the minority members of the legislature vote on the proposed changes in law?

IS THERE A LESS RETROGRESSIVE ALTERNATIVE?

- Are non-photo documents (birth certificate, social security cards, etc) proven to be unreliable or lack security (ie. is there evidence of theft, forgery, or fraud)?
- Is there evidence that criminal penalties are insufficient to deter voter fraud?
- Are there additional forms of photo ID that could be accepted for voting?

DOES THE NEW LAW INCLUDE MITIGATING EFFECTS?

- Are photo IDs free of charge and widely available?
- Is there a phased-in period of implementation?
- Are there "fail-safe" procedures (ie. permit voting if voter signs and affidavit, etc)?
- Are there education efforts targeted at minority communities?
- Is there a program designed to provide photo IDs in isolated and impoverished areas?
- Are there other programs or factors designed to minimize the impact on minority voters?

HOW DOES THIS LAW COMPARE TO THE LAW OF OTHER STATES?

- Is it more or less restrictive than identification laws in other states?

Conclusion

The 2005 DOJ staff placed a lot of emphasis on whether a state allows non-photo ID options, accepts enough forms of photo ID, or includes a "fail-safe" procedure for voting without a photo ID. Without inclusion of these three options, it seems doubtful that the DOJ staff will recommend preclearance of a photo ID law.

It is also possible that the DOJ will be reluctant to deny preclearance and have the case go before the US Supreme Court, which could use the opportunity to overturn some or all of Section 5 of the Voting Rights Act.

It is unclear how a DC Circuit Court would rule on this matter and unclear how the US Supreme Court's 2008 ruling in the Indiana photo ID case or 2009 ruling in the NAMUDNO case would impact a DOJ decision.